

Handouts

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2.1

CFSA Intent

- Provides for a broad range of services
- For families and children
- Promotes the best interests, protection, and well-being of children



2.2

CFSA: Duty To Report

Every person, including a person who performs professional or official duties with respect to children, who has reasonable grounds to suspect that a child is in need of protection, must report such a suspicion to a children's aid society immediately.

A person:

- Who performs professional and official duties with respect to children and
- Who, in the course of his/her professional or official duties, has reasonable grounds to suspect that a child is in need of protection, and
- who fails to report such a suspicion immediately,

is guilty of an offence, liable to a fine of up to \$1,000.

Report must be made to a children's aid society and where appropriate, the police. The police should also be notified if the alleged offender is not a parent, guardian, or person in charge of the child.

A director, officer, or employee of a corporation, who authorizes, permits, or concurs in the contravention by an employee of the corporation of the requirement to report, may be fined up to \$1,000.

A corporation includes a non-profit corporation.



2.3

Designated Professionals and Officials

INCLUDES:

Health care professionals (e.g., doctors, nurses, pharmacists, dentists, psychologists)

Teachers and school principals

Social workers and family counsellors

Priests, rabbis, members of the clergy

Operators or employees of a day nursery

Youth and recreation workers (but not volunteers)

Peace officers and coroners

Solicitors and

Service providers and employees of service providers

Note:

A SERVICE PROVIDER means the Minister (of Community and Social Services), a Minister-approved agency, a society, a licensee, or a person who provides an approved service or provides a service purchased by the Minister or an approved agency.

Introduction

CC terminology and definitions

CC offences are described as follows. There are no direct references in the CC to child abuse or child sexual abuse.

An assault is generally defined as the intentional application of force to a person by another without consent. This can include mere touching.

Sexual assault is a type of assault. It has been described as a situation where assault of a sexual nature violates the sexual integrity of the victim. This includes an act that is intended to degrade or demean another person for sexual gratification.

The *Criminal Code* specifically recognizes the vulnerability of children to sexual offences. There are several offences dealing with the direct or indirect touching of children's bodies for sexual purposes. These are as follows:

- “Sexual interference” is the direct or indirect touching, for a sexual purpose, of any part of the body of a child under the age of 14;
- “Invitation to sexual touching” involves inviting a child under the age of 14, to touch his or her own body or the body of any other person, including the person doing the inviting, for a sexual purpose;
- “Sexual exploitation” is an offence committed by anyone in a position of trust or authority towards a young person, defined as someone between the ages of 14 and 18 years old, who touches that young person for a sexual purpose or invites touching for a sexual purpose.

There are additional offences, including:

- Indecent acts, including the exposure of genitals for a sexual purpose, where the child is under the age of 14;
- Attempting to obtain the sexual services of a child under 18 years of age; and
- Permitting any sexual activity involving a child under 18 on premises within the control of the offender.

Consent

The issue of when a person can be said to have voluntarily agreed to engage in sexual activity is a very complicated one in criminal law. In general, when someone has abused a position of trust, power, or authority in inducing a person to engage in sexual activity or in committing sexual assault, there is no consent.



2.5

Criminal Code: Prohibition Orders

Prohibition orders can be sought in two circumstances:

- a. where a person has reasonable grounds to fear that another will commit certain sexual offences against children under 14.

The order may prohibit the individual from attending at specified places where children under 14 are likely to be present for up to 12 months.

- b. where an offender has been convicted or conditionally discharged with respect to certain sexual offences against children under 14.

The order may prohibit the offender from attending at specified places where children under 14 are likely to be present or from seeking employment or volunteer work that involves being in a position of trust or authority towards children under 14. The order may be in effect for any period up to life.



2.6

Duty of Care

Duty of care refers to the legal obligation on an individual or organization toward others who participate in the organization's programs or activities to take reasonable measures to protect the others from an unreasonable risk of harm.

Organizations are encouraged to seek legal advice on how to best meet "duty of care" obligations

Liability refers to an individual's or organization's legal responsibility for an action or inaction that causes harm or wrong. Liability is enforced by the courts.

If an organization does not meet the standard of care required of it under specific circumstances, the organization, and possibly the individuals involved in it, may be held directly liable for negligence.

An organization may be found to be directly liable because of certain actions it took, but it may also be directly liable for not taking action it should have taken to protect others against unreasonable risk of harm. This includes not properly screening, supervising, evaluating, or monitoring people who provide the services and programs.

An organization can also be held liable for the harmful actions of the people who act on its behalf. A court may find an organization liable even if the organization itself had no knowledge of the harmful actions. This includes the actions of paid staff, volunteers, and other people who provide a service to the organization (e.g., co-op students, or people on community service orders).

The organization is expected to protect people from harm that may arise from:

- Programs or activities offered
- Premises or facilities used
- People who act on behalf of the organization or other people who may come onto the premises or into the programs.



2.7

The law recognizes that there are risks in any activity. It requires that individuals and organizations take reasonable measures to prevent, minimize, avoid, or eliminate the risks.



2.8

Standard of Care

- Level and kind of care
- No one single standard of care
- Standard depends on:
 - nature of relationship between the parties
 - nature of the programs
 - risks in the programs

Basic question:

Did the organization do what was necessary, appropriate, and reasonable, under the circumstances, to ensure to the extent reasonably possible, that harm would not come to those in its care?